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PAYMENT IN LIEU OF TAX AGREEMENT

FOR

-- PURA 14 PROPERTY --

BETWEEN

THE

CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY

AND

J.M DEVELOPMENT GROUP, LLC

DATED AS OF DECEMBER, 29, 2009

*36 Pine Street
Laurel Street*

THIS AGREEMENT, dated as of December 29, 2009, by and between **JM DEVELOPMENT GROUP, LLC** (the "Company"), with offices 176 Rinaldi Boulevard, Poughkeepsie, New York 12601 and the **CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY** (the "CPIDA"), a public benefit corporation located within the City of Poughkeepsie, County of Dutchess and the State of New York with offices at 62 Civic Center Plaza, Poughkeepsie, New York

W I T N E S S E T H:

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 30 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, civic, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, the Enabling act further authorizes each such agency to sell or lease any or all of its facilities on such terms and conditions as it deems advisable, for the purpose of carrying out any of its corporate purposes; and

WHEREAS, CPIDA was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 304 of the Laws of 1974 of the State of New York, as amended by Chapter 958 of the Laws of the State of New York (collectively with the Enabling Act, the "Act"), and is empowered under the Act to undertake the providing of the "Facility" (as that quoted term is hereinafter defined) in order to so promote job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, said Facility shall consist of a parcel of land containing approximately 5.53 acres located on Pine Street on the easterly side of the Hudson River in the City of Poughkeepsie, New York and within the Empire Zone defined for the Poughkeepsie/Dutchess County area and administered pursuant to the General Municipal Law and the Tax Law of the State of New York (the "Land") for a term of 99 years to the Company (the "Lease Agreement"), and the construction and operation on the Land of a certain Waterfront Development Project consisting of Minimum Improvements as defined in the Lease Agreement; and

WHEREAS, the Agency believes that the redevelopment of the Land pursuant to the Lease Agreement and the fulfillment generally of the Lease Agreement, are in the vital and best interests of the City, and the health, safety, morals and welfare of the City's residents, and in accord with the public purposes and provisions of the applicable Federal, State and local laws, and requirements under which the Facility has been undertaken and is being assisted; and

WHEREAS, in that the Facility is exempt from the payment of real estate taxes and certain assessments imposed upon real property, as a further condition to the Lease Agreement, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the CPIDA on behalf of the Taxing Jurisdictions during the term of the Lease Agreement in lieu of general tax levies ("Payments In Lieu of Tax"); and

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

SECTION I

TAX-EXEMPT STATUS OF FACILITY

- a. Definitions: Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Lease Agreement.
- b. Components of Facility: The Company has agreed in the Lease Agreement to undertake and construct the Minimum Improvements, which are defined in the Lease Agreement, and include a mixed use building at least 30,000 square foot with a combination of commercial offices, residential units and luxury hotel, and separate or combined parking structure and site improvements. The Minimum Improvements are subject to this Agreement and the Company is responsible to make Payments In Lieu of Tax due hereunder for the Minimum Improvements, as well as for the value of the Land.
- c. Assessment of Facility: Pursuant to §§874 of the General Municipal Law and §412-c of the Real Property Tax Law, the parties hereto understand that, upon the Lease Agreement Commencement Date, and for so long thereafter as the Lease Agreement shall remain in effect, the Land and Minimum Improvements shall be assessed by the City Assessor as exempt upon the City's assessment rolls.
- d. Special Assessments: The parties hereto understand that the tax exemption extended to the CPIDA by §874 of the General Municipal Law and §412-a of the Real Property Tax Law does not entitle the CPIDA to exemption from special assessments and special ad valorem levies. Commencing on the Lease Agreement Commencement Date and continuing during the term of the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Land and the Improvements. The Company confirms its obligations under the Lease Agreement and agrees to pay such lawfully levied and/or assessed taxes and assessments.

SECTION II

AMOUNT OF PAYMENTS IN LIEU OF TAXES; PROCEDURE FOR PAYMENT

Commencing on the Lease Agreement Commencement Date, the Company agrees to pay to the CPIDA on behalf of the City, the City of Poughkeepsie School District and the County of Dutchess (collectively, the "Taxing Jurisdictions"), as Payments In Lieu of Tax, the following percentages of real estate taxes (the "Taxes") that would otherwise be levied on the Land and Minimum Improvements by the Taxing Jurisdictions, if the same were subject to full real property taxation, and were not the beneficiary of any credits, rebates, reductions or exemptions of any kind:

<u>YEARS</u>	<u>PERCENT OF TAXES</u>
Commencing First year after issuance of Building Permit for any component of the Facility to issuance of Certificate of Occupancy for any component of the Facility	\$10,000.00, per year
Commencing First year after issuance of Certificate of Occupancy for either office, hotel or parking use through end of lease.	2% of Gross Revenues generated by, or derived from the Minimum Improvements but not more than the taxes that would otherwise be due and owing if the Land and Minimum Improvements were fully taxable.

2010
2011

b. Except as provided in Section e. below for the first year of Payment In Lieu of Tax liability, the CPIDA, acting as collecting agent for the Taxing Jurisdictions, shall bill the Company on or about February 1st of each in lieu of year for the payment due hereunder.

c. For purpose of this agreement, the term Timely Payment shall be defined as payment made within thirty (30) days after the receipt by the Company of a written bill or invoice demanding payment. In the event that Timely Payment of such Payments In Lieu of Tax is not made, the Company's obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at a rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full. In the event that Timely Payment of Payments In Lieu of Tax is not made:

(i) The Company agrees to pay reasonable attorneys' fees and expenses incurred by the CPIDA in collection of such payments.

- (ii) The Company hereby agrees to pay the same to the extent above specified:
 - (a) Without requiring any notice of non-payment or of default to the Company, or to any other person;
 - (b) Without proof of demand.

d. Each year the aggregate annual PILOT payment amount calculated pursuant to Subsection a above shall be allocated among the Taxing Jurisdictions in proportion to the amount of real property and other taxes which would have been received by each affected Taxing Jurisdiction had the Land and Minimum Improvements not been tax exempt due to the status of the Agency, with each PILOT payment being pro-rated based on the tax rate for the City/County Taxes which would become a lien as of the PILOT payment due date, and on the tax rate for School taxes which would become a lien as of the August first (1st) date immediately preceding the PILOT payment due date. In accordance with Section 874(3) of the Act, PILOT payments received by the Agency shall be remitted to each of the Taxing Jurisdictions within thirty (30) days of receipt.

e. If the commencement of the Company's liability for Payment In Lieu of Tax payments occurs during the tax year of the Taxing Jurisdictions, then CPIDA shall issue a bill for the Payment In Lieu of tax liability to the Company for the portion of the year remaining. Payment shall be as described in this Section II.

SECTION III

EMPIRE ZONE ELIGIBILITY

The CPIDA and the Company acknowledge that under the New York State Empire Zone Program, the Company may be eligible for certain tax benefits. The Company specifically covenants and agrees that it shall not apply only for, nor shall the Company accept any Empire Zone benefits that reduce or delay the Payment In Lieu of Tax payments defined in this Agreement.

SECTION IV

ADDITIONS TO FACILITY

Should the Company, during the term of this Agreement, cause to be constructed on the Land any commercial improvement in addition to the Minimum Improvements being erected hereunder then, and in that event, the City Assessor shall assess the value of the new commercial improvements and the total assessed value of the Facility shall be increased thereby, and Payments In Lieu of Tax shall be paid thereon.

SECTION V

UTILITY CHARGES AND SPECIAL DISTRICT ASSESSMENTS

It is understood and agreed by and between the parties hereto that in addition to any payment due by the Company pursuant to Section II above, the Company shall be liable for charges for metered water consumed, as well as sewer charges, and special district assessments for sewer, water and the like, if any, for which the Company shall be billed each quarterly by the City.

SECTION VI

TERM OF AGREEMENT

This Payment In Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon (a) the approval of this Payment In Lieu of Tax Agreement by resolution of the CPIDA and (b) the execution and delivery of this Payment In Lieu of Tax Agreement by the CPIDA and the Company. This Payment In Lieu of Tax Agreement shall continue to remain in effect until the date on which the Facility is no longer leased by the Company from the CPIDA.

SECTION VII

ADDITIONAL PROVISIONS RELATING TO DEFAULT

In the event any payment is not received by the CPIDA on the date when due, or the Company otherwise defaults under this Payment in Lieu of Tax Agreement, the CPIDA may take such other action at law or in equity as it deems appropriate to collect amounts due hereunder, including reasonable attorneys' fees and other costs and disbursements.

SECTION VIII

AMENDMENT OF AGREEMENT

This Agreement may not be effectively amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and executed and delivered by the CPIDA and the Company.

SECTION IX

BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon the CPIDA and the Company and their respective successors and assigns. This Agreement shall not be assigned except as provided in Section 14.01 of the Lease Agreement.

SECTION X

NOTICES

a. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently deemed given when sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other method as shall provide the sender with documentary evidence of such delivery. The addresses to which notices, certificate or other communications hereunder, shall be delivered are as follows:

To the Company:	JM Development Group, LLC Attn: Joseph A. Bonura, Jr. 176 Rinaldi Boulevard Poughkeepsie, New York 12601
With a Copy to:	Arthur L. Gellert, Esq. Gellert & Klein, P.C. 75 Washington Street Poughkeepsie, NY 12601
To the CPIDA:	CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY c/o Mayor 62 Civic Center Plaza, Poughkeepsie, NY 12601
With a copy to:	CORPORATION COUNSEL City of Poughkeepsie 62 Civic Center Plaza, Poughkeepsie, NY 12601

SECTION XI

SEVERABILITY

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION XII

COUNTERPARTS

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION XIII

APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of New York. The venue of any litigation arising out of this Agreement shall be the Supreme Court of the State of New York, Dutchess County.

SECTION XIV

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and shall not be modified unless in writing and signed by all of the parties hereto in the same manner as this Agreement is executed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the date set forth hereinabove.

CITY OF POUGHKEEPSIE
INDUSTRIAL DEVELOPMENT AGENCY

By: 

John C. Tkazyik, Chair

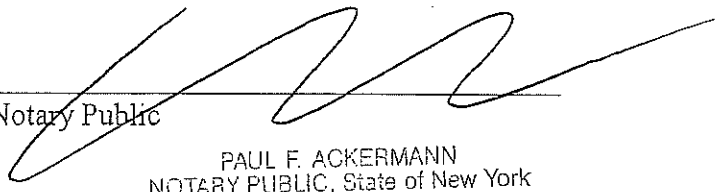
JM DEVELOPMENT GROUP
DEVELOPMENT, LLC

By: 

Michael Bonura, Member

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

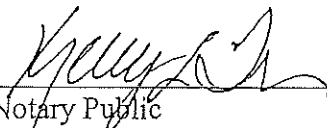
On the 29th day of December in the year 2009 before me, the undersigned, personally appeared John C. Tkazyik, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
PAUL F. ACKERMANN
NOTARY PUBLIC, State of New York
01AC6027326
Qualified in Dutchess County
Commission Expires 07-06-2011

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

On the 29th day of December in the year 2009 before me, the undersigned, personally appeared Michael Bonura personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
KELLY L. TRAVER
Notary Public, State of New York
Reg. No. 01TR6059689
Qualified in Dutchess County
Commission Expires June 4, 2011